



## 98TH GENERAL ASSEMBLY

### State of Illinois

2013 and 2014

HB0162

Introduced 1/16/2013, by Rep. Linda Chapa LaVia

#### SYNOPSIS AS INTRODUCED:

755 ILCS 5/11-13.4 new  
755 ILCS 5/25-1

from Ch. 110 1/2, par. 25-1

Amends the Probate Act of 1975. Provides that the terms of a guardianship account established on behalf of a minor at a financial institution must provide for compliance with court orders regarding the establishment and management of the account, and imposes certain other duties upon financial institutions. Provides that an entity may not act under the direction of a small estate affidavit unless the affiant, or his or her agent, has first presented the affidavit before a judge and obtained a court order granting access. Provides that the affidavit shall state that the burial and funeral expenses, medical bills, credit card bills, and real property taxes (instead of funeral expenses) have been, or remain to be, paid. Provides that if there is a surviving spouse, but the surviving spouse is not the affiant, the affiant must state the reason that the affiant, rather than the surviving spouse, has prepared the small estate affidavit. Provides that an affidavit not prepared by a surviving spouse must include a notarized statement, signed by the surviving spouse and witnessed by 2 persons unrelated to the affiant, stating that the surviving spouse declines to prepare the affidavit. Provides that if the reason for the surviving spouse's inability to prepare the affidavit is medically related, a letter from the surviving spouse's physician should be attached attesting to the medical condition that makes the surviving spouse unable to complete the affidavit. Provides that if there is no surviving spouse and there is one or more minor children, the affiant must be a court appointed guardian for one or more of the children. Provides that if the surviving spouse is the affiant, he or she shall affirm that he or she was not separated from the decedent. Makes other changes.

LRB098 04168 HEP 34191 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Probate Act of 1975 is amended by changing  
5 Section 25-1 and adding Section 11-13.4 as follows:

6 (755 ILCS 5/11-13.4 new)

7 Sec. 11-13.4. Financial institution; guardianship accounts  
8 established on behalf of minors.

9 (a) If an account at a financial institution is a  
10 guardianship account established on behalf of a minor, the  
11 terms of the account must provide for compliance with orders of  
12 the court, if any, regarding the establishment and management  
13 of that account. A financial institution has a duty to inquire  
14 as to the existence of any court orders when opening a  
15 guardianship account on behalf of a minor. If the financial  
16 institution holds an account that is subject to a court order,  
17 the financial institution must obtain a court order granting  
18 the authority to release funds from the account. An order  
19 authorizing the disbursement of funds in the account may be  
20 granted only upon a showing of good cause.

21 (b) A guardian of a minor that establishes an account with  
22 a financial institution on behalf of the minor pursuant to a  
23 court order has a duty to present the court order to the

1 financial institution at the time the account is opened.

2 (c) As used in this Section, "financial institution"  
3 includes, but is not limited to, a bank, credit union,  
4 investment company, savings bank, savings and loan  
5 association, securities dealer, and trust company.

6 (755 ILCS 5/25-1) (from Ch. 110 1/2, par. 25-1)

7 Sec. 25-1. Payment or delivery of small estate of decedent  
8 upon affidavit.

9 (a) When any person, ~~or~~ corporation, or financial  
10 institution (1) indebted to or holding personal estate of a  
11 decedent, (2) controlling the right of access to decedent's  
12 safe deposit box or (3) acting as registrar or transfer agent  
13 of any evidence of interest, indebtedness, property or right is  
14 furnished with a small estate affidavit in substantially the  
15 form hereinafter set forth, that person, ~~or~~ corporation, or  
16 financial institution, upon examining and approving the  
17 documents presented by the affiant which are attached to the  
18 small estate affidavit, shall pay the indebtedness, grant  
19 access to the safe deposit box, deliver the personal estate or  
20 transfer or issue the evidence of interest, indebtedness,  
21 property or right to persons and in the manner specified in  
22 paragraph 11 of the affidavit or to an agent appointed as  
23 hereinafter set forth.

24 (a-5) A person, corporation, or financial institution may  
25 not pay the indebtedness, grant access to the safe deposit box,

1 deliver the personal estate, or transfer or issue the evidence  
 2 of interest, indebtedness, property or right as provided in  
 3 subsection (a) of this Section, unless the affiant, or his or  
 4 her agent, has first obtained a court order as provided in this  
 5 subsection (a-5). A judge shall grant an order under this  
 6 subsection (a-5) if the affiant presents: (i) the small estate  
 7 affidavit; (ii) evidence of notice having been given to the  
 8 heirs or legatees identified in paragraph 10 of the affidavit;  
 9 and (iii) a petition asking the court to find that the  
 10 affidavit does not appear to have been fraudulently executed  
 11 and to grant access to property in the manner specified in  
 12 paragraph 11 of the affidavit. A person, corporation, or  
 13 financial institution has a duty to inquire as to the existence  
 14 of any court orders before taking action under this Section.

(b) Small Estate Affidavit

I, (name of affiant) , on oath state:

1. (a) My post office address is: ;

(b) My residence address is: ; and

(c) I understand that, if I am an out-of-state resident, I submit myself to the jurisdiction of Illinois courts for all matters related to the preparation and use of this affidavit. My agent for service of process in Illinois is:

NAME.....

ADDRESS.....

CITY.....

TELEPHONE (IF ANY).....

1 I understand that if no person is named above as my agent for  
 2 service or, if for any reason, service on the named person  
 3 cannot be effectuated, the clerk of the circuit court of  
 4 .....(County) (Judicial Circuit) Illinois is recognized by  
 5 Illinois law as my agent for service of process.

6 2. The decedent's name is ;

7 3. The date of the decedent's death was , and I  
 8 have attached a copy of the death certificate hereto.

9 4. The decedent's place of residence immediately before his  
 10 death was ;

11 5. No letters of office are now outstanding on the  
 12 decedent's estate and no petition for letters is contemplated  
 13 or pending in Illinois or in any other jurisdiction, to my  
 14 knowledge;

15 6. The gross value of the decedent's entire personal  
 16 estate, including the value of all property passing to any  
 17 party either by intestacy or under a will, does not exceed  
 18 \$100,000. (Here, list each asset, e.g., cash, stock, and its  
 19 fair market value.);

20 7. (a) All of the decedent's burial and funeral expenses have been  
 21 paid, or (b) The amount of the decedent's unpaid burial and funeral  
 22 expenses, medical bills, credit card bills, and real property taxes  
 23 and the name and post office address of each person entitled thereto  
 24 are as follows:

25 Name and post office address	Amount
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26 (Strike either 7(a) or 7(b)).

1 8. There is no known unpaid claimant or contested claim against  
2 the decedent, except as stated in paragraph 7.

3 9. (a) The names and places of residence of any surviving  
4 spouse, minor children and adult dependent\* children of the decedent  
5 are as follows:

	Name and Relationship	Place of Residence	Age of minor child
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8

9 \* (Note: An adult dependent child is one who is unable to maintain  
10 himself and is likely to become a public charge.)

11 (b) The award allowable to the surviving spouse of a decedent who  
12 was an Illinois resident is \$..... (\$20,000, plus \$10,000  
13 multiplied by the number of minor children and adult dependent  
14 children who resided with the surviving spouse at the time of the  
15 decedent's death. If any such child did not reside with the surviving  
16 spouse at the time of the decedent's death, so indicate).

17 (c) If there is no surviving spouse, the award allowable to the  
18 minor children and adult dependent children of a decedent who was an  
19 Illinois resident is \$..... (\$20,000, plus \$10,000 multiplied by  
20 the number of minor children and adult dependent children), to be  
21 divided among them in equal shares. If there is no surviving spouse  
22 and there are minor children, the affiant must be a court appointed  
23 guardian for one or more of the children. If this provision applies,  
24 the date of the court order making this appointment was .....,  
25 and I have attached a copy of the court order.



1       10.1. I, .....(the affiant) state that I am the surviving  
 2       spouse and the decedent and I resided together as husband and wife and  
 3       we were not legally separated, or otherwise separated, at the time of  
 4       decedent's death.

5       10.2. I, ..... (the affiant) state that my relationship to  
 6       the decedent is ..... and (check all that apply):

7       ... there is no surviving spouse; or

8       ... there is a surviving spouse, but the surviving spouse is:

9       ... unable to prepare the small estate affidavit for medical

10       reasons as shown by the attached letter of a physician for the

11       surviving spouse, based upon the physician's examination of the

12       surviving spouse within 90 days prior to the date of the affidavit,

13       attesting to and describing this disabling medical condition; or

14       ... has declined, refused, or asked affiant to prepare the small

15       estate affidavit. The reason that the affiant has prepared this small

16       estate affidavit rather than the surviving spouse is that (state here

17       the precise time, date, and circumstances of the surviving spouse

18       declining, refusing, or asking affiant to prepare the small estate

19       affidavit):

20       .....

21       Attached is a statement of the surviving spouse in which the

22       surviving spouse expressly declines or states that he or she refuses

23       to prepare the small estate affidavit or expressly requests that the

24       affiant prepare the small estate affidavit. This statement must be

25       signed by the surviving spouse, witnessed by 2 persons unrelated to

26       the affiant, and be notarized.



1 and the payment, delivery, transfer, access or issuance shall  
2 be made or granted to or on the order of the agent.

3 (d) Release. Upon examination and approval of all documents  
4 presented by the affiant with this small estate affidavit,  
5 payment, delivery, transfer, access or issuance pursuant to a  
6 properly executed affidavit, the person, ~~or~~ corporation, or  
7 financial institution is released to the same extent as if the  
8 payment, delivery, transfer, access or issuance had been made  
9 or granted to the representative of the estate. Such person, ~~or~~  
10 corporation, or financial institution is not required to see to  
11 the application or disposition of the property; but each person  
12 to whom a payment, delivery, transfer, access or issuance is  
13 made or given is answerable therefor to any person having a  
14 prior right and is accountable to any representative of the  
15 estate.

16 (e) The affiant signing the small estate affidavit prepared  
17 pursuant to subsection (b) of this Section shall indemnify and  
18 hold harmless all creditors and heirs of the decedent and other  
19 persons relying upon the affidavit who incur loss because of  
20 such reliance. That indemnification shall only be up to the  
21 amount lost because of the act or omission of the affiant. Any  
22 person recovering under this subsection (e) shall be entitled  
23 to reasonable attorney's fees and the expenses of recovery.

24 (f) The affiant of a small estate affidavit who is a  
25 non-resident of Illinois submits himself or herself to the  
26 jurisdiction of Illinois courts for all matters related to the

1 preparation or use of the affidavit. The affidavit shall  
2 provide the name, address, and phone number of a person whom  
3 the affiant names as his agent for service of process. If no  
4 such person is named or if, for any reason, service on the  
5 named person cannot be effectuated, the clerk of the circuit  
6 court of the county or judicial circuit of which the decedent  
7 was a resident at the time of his death shall be the agent for  
8 service of process.

9 (g) Any action properly taken under this Section, as  
10 amended by Public Act 93-877, on or after August 6, 2004 (the  
11 effective date of Public Act 93-877) is valid regardless of the  
12 date of death of the decedent.

13 (h) The changes made by this amendatory Act of the 96th  
14 General Assembly apply to a decedent whose date of death is on  
15 or after the effective date of this amendatory Act of the 96th  
16 General Assembly.

17 (Source: P.A. 96-968, eff. 7-2-10.)